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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,108	03/05/2001	Richard S. Raskin	055738/00005	2745

7590 06/30/2005

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EXAMINER

PASS, NATALIE

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/800,108

Applicant(s)

RASKIN ET AL.

Examiner

Natalie A. Pass

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9 August 2001.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the application filed 05 March 2001. Claims 1-37 are pending.

Specification

2. The abstract of the disclosure is objected to because it exceeds 150 words in length. Correction is required. See MPEP § 608.01(b).

Claim Objections

3. Claims 6 and 37 are objected to because of the following informalities:
 - The acronym "Champus" in claim 6, line 2 should be defined in words the first time it appears, with the abbreviations in parentheses;
 - the acronym "EOBs," in claim 37, line 2 should be defined in words the first time it appears, with the abbreviations in parentheses.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(A) Claim 21 recites "[t]he method of claim 19 wherein said other criteria" on line 1. There is insufficient antecedent basis for this limitation. For the purpose of applying art, Examiner assumes the limitation to read "[t]he method of claim 20 wherein said other criteria."

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requires of this title.

7. Claims 1-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to

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pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1-35 only recite abstract ideas. The recited claims detailing the steps of offering an employee a choice between plans, conditioning the availability of the plan and reimbursing the employee do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute different parts of a method for controlling employer's health care costs.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, as recited in claims 22-37, the claimed invention produces an employee reimbursement (i.e., repeatable) that can be used in reimbursing the employee for eligible expenses not reimbursed under an alternate health plan (i.e., useful and tangible). However, as recited in claims 1-21, the steps of offering a choice between health care plans and conditioning the availability of health care plans is just descriptive material *per se*. The method steps recited in claims 1-21 do not produce a useful, concrete and tangible result.

Since the recited process of claims 1-21 fails to produce a useful, concrete, and tangible result and since claims 1-35 are not within the technological arts as explained above, claims 1-35 are deemed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-2, 7-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lencki et al., U.S. Patent Application Publication Number 2002/0049617.

(B) As per claim 1, Lencki teaches a method for an employer of at least one employee to control health care costs (Lencki; paragraph [0078]) comprising the steps of:

offering an employee the choice between (a) a plan or account sponsored by the employer that reimburses for eligible health care expenses and (b) the employer's other health care coverage (Lencki; paragraph [0009]).

Lencki fails to explicitly disclose conditioning the availability of said plan or account on the employee declining at least in part said employer's other health care coverage for at least one of himself and another individual eligible to participate under said employer's other health care coverage and electing coverage for at least one of himself and said other eligible individual under an alternate health care plan. However, the above features are well known in the art, and Lencki clearly teaches "[i]f the package is not selected, the member may 2206 start over or jump to an Expert builder. If the package is selected, the enrollment selection is processed 2207, the selection is stored 2208 in the employee history, a confirmatory email is sent 2209 to the employer and employee, and the member is redirected 2210 to the primary physician selection screen" (Lencki; Figure 22A, Item 2205, paragraph [0094]).

It is respectfully submitted that since Lencki is directed to "improving employer and consumer satisfaction, while confronting the rising costs of employee benefit offerings,"

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(Lencki; paragraph [0078]) Lencki's teachings of conditioning the enrollment selection on whether or not the "package is selected," as recited in the above passage, broadly reads on the claimed "conditioning the availability of said plan or account on the employee declining at least in part....".

It is the position of the Examiner that one having ordinary skill in the art at the time of the invention would have found it obvious to include conditioning the availability of said plan or account on the employee declining at least in part said employer's other health care coverage for at least one of himself and another individual eligible to participate under said employer's other health care coverage and electing coverage for at least one of himself and said other eligible individual under an alternate health care plan within the method disclosed by Lencki, with the motivation of providing a consumer choice with defined contribution strategy and enabling the employer to move the discussion away from the emotionally charged debate of benefits, enable the workforce with consumer information, empower the employees as consumers with benefit options, and give the employer a strategy to better manage/budget the cost of employee benefit on a yearly basis (Lencki; paragraph [0080]).

(C) As per claims 2, 7-12, Lencki teaches a method as analyzed and discussed in claim 1 above

wherein said other eligible individual comprises at least one of the employee's spouse, the employee's children, the employee's dependents and the employee's domestic partner (Lencki; paragraphs [0084], [0208];

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wherein said plan or account is used to reimburse eligible health care expenses consisting of deductibles, co-payments and coinsurance amounts required by said alternate health care plan (Lencki; paragraph [0193]);

wherein the employee declines all of said employer's other health care coverage for himself and said other eligible individual, and said plan or account is used to reimburse eligible expenses not covered under said alternate health care plan (Lencki; paragraph [0193]);

wherein said employer's other health care coverage includes a dental care plan and the employee declines all of said employer's other health care coverage for himself and said other eligible individual except the dental care plan (Lencki; paragraphs [0179]-[0180]);

wherein said plan or account is used to reimburse eligible expenses not covered under said alternate health care plan and eligible expenses related to dental care not covered by the dental care plan (Lencki; paragraph [0193]);

wherein said employer's other health care coverage includes a vision care plan and the employee declines all of said employer's other health care coverage for himself and said other eligible individual except the vision care plan (Lencki; paragraph [0009]); and

wherein said plan or account is used to reimburse eligible expenses not covered under said alternate health care plan and eligible expenses related to vision care not covered by the vision care plan (Lencki; paragraph [0193]).

(D) As per claims 13-18 Lencki teaches a method as analyzed and discussed in claim

1 above

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wherein said employer's other health care coverage includes a health care flexible spending account (Lencki; paragraph [0193]);

wherein reimbursement claims under said plan or account are wholly funded by the employer(Lencki; paragraph [0309]);

wherein reimbursement claims under said plan or account are funded by the employer and the employee's pre-tax-contributions (Lencki; paragraph [0193]);

wherein reimbursement claims under said plan or account are paid by at least one of the employer, an insurance policy and a trust (Lencki; paragraph [0242]);

comprising the further step of imposing an annual limit on the amount of eligible health care expenses reimbursable under said plan or account (Lencki; paragraphs [0146], [0206]); and

comprising the further step of varying the imposed annual limit on the amount of eligible health care expenses reimbursable under said plan or account separately as to one or more of the employee and said other eligible individual under said plan or account (Lencki; paragraphs [0146], [0206]).

10. Claims 3-6, 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lencki et al., U.S. Patent Application Publication Number 2002/0049617 as applied to claim 1 above, and further in view of Blau, D. et al., A Dynamic Structural Model of Health Insurance and Retirement. January 2000. URL: <<http://www.people.virginia.edu/~sns5r/microwkshp/gilleskie.pdf>>, hereinafter known as Blau.

(A) As per claim 3, Lencki teaches a method as analyzed and discussed in claim 1 above.

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Lencki fails to explicitly disclose

wherein the employee declines all of said employer's other health care coverage for himself and said other eligible individual and the alternate health care plan is sponsored by at least one of an employer of the employee's spouse, an employer of another family member of the employee and an employer of a domestic partner of the employee.

However, the above features are well-known in the art, as evidenced by Blau.

In particular, Blau teaches

wherein the employee declines all of said employer's other health care coverage for himself and said other eligible individual and the alternate health care plan is sponsored by an employer of the employee's spouse (Blau; page 23, paragraph 2, lines 3-4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Lencki to include wherein the employee declines all of said employer's other health care coverage for himself and said other eligible individual and the alternate health care plan is sponsored by an employer of the employee's spouse, as taught by Blau, with the motivation of allowing individuals to make choices about health insurance coverage from among the available alternatives (Blau; paragraph bridging pages 3-4).

(B) As per claims 4-6, Lencki and Blau teach a method as analyzed and discussed above.

wherein the employee declines all of said employer's other health care coverage for himself and said other eligible individual and the alternate health care plan is sponsored by at

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least one of the employee's former employer, or a former employer of the employee's spouse (Blau; page 15, lines 4-6);

wherein the employee declines all of said employer's other health care coverage for himself and said other eligible individual and said alternate health care plan is at least one of a government plan, a student plan and private insurance (Blau; Table 5, paragraph bridging pages 22-23); and

wherein said government plan comprises at least one of Medicare and Champus (Blau; Table 5, paragraph bridging pages 3-4).

The motivations for combining the respective teachings of Lencki and Blau are as given in the rejection of claim 3 above, and incorporated herein.

(C) As per claims 19-21, Lencki and Blau teach a method as analyzed and discussed above

comprising the further step of varying the imposed annual limit on the amount of eligible health care expenses reimbursable under said plan or account depending upon the extent to which the employee foregoes coverage available under said employer's other health care coverage (Blau; page 33, paragraph 2);

comprising the further step of varying the imposed annual limit on the amount of eligible health care expenses reimbursable under said plan or account depending upon other criteria established by the employer (Blau; page 33, paragraph 2); and

wherein said other criteria include at least one of the employee's family status and the employee's health habits (Blau; page 35, paragraph 3).

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11. Claims 22, 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lencki et al., U.S. Patent Application Publication Number 2002/0049617 in view of Trilogy Financial Group website, Frequently Asked PHSP Questions. March 2000. URL: <<http://www.freshfrog.com/etrilogy/private3.html>>, hereinafter known as Trilogy.

(A) Claim 22 differs from claim 1 in that it is a method that includes the step of reimbursing the employee for eligible health care expenses not reimbursed under said alternate health care plan.

As per claim 22, Lencki teaches a method of reducing an employer's health care costs comprising the steps of

providing an employee with the option to elect between an employer sponsored health care expense reimbursement plan or account and the employer's other sponsored health care coverage (Lencki; paragraph [0009]).

Lencki fails to explicitly disclose conditioning the availability of said reimbursement plan or account on the employee declining said employer's other sponsored health care coverage and electing coverage under an alternate health care plan. However, the above features are well known in the art, and Lencki clearly teaches “[i]f the package is not selected, the member may 2206 start over or jump to an Expert builder. If the package is selected, the enrollment selection is processed 2207, the selection is stored 2208 in the employee history, a confirmatory email is sent 2209 to the employer and employee, and the member is redirected 2210 to the primary physician selection screen” (Lencki; Figure 22A, Item 2205, paragraph [0094]).

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It is respectfully submitted that since Lencki is directed to “improving employer and consumer satisfaction, while confronting the rising costs of employee benefit offerings,” (Lencki; paragraph [0078]) Lencki’s teachings of conditioning the enrollment selection on whether or not the “package is selected,” as recited in the above passage, broadly reads on the claimed “conditioning the availability of said reimbursement plan or account on the employee declining said employer's other sponsored health care coverage and electing coverage under an alternate health care plan...”.

It is the position of the Examiner that one having ordinary skill in the art at the time of the invention would have found it obvious to include conditioning the availability of said reimbursement plan or account on the employee declining said employer's other sponsored health care coverage and electing coverage under an alternate health care plan within the method disclosed by Lencki, with the motivation of providing a consumer choice with defined contribution strategy and enabling the employer to move the discussion away from the emotionally charged debate of benefits, enable the workforce with consumer information, empower the employees as consumers with benefit options, and give the employer a strategy to better manage/budget the cost of employee benefit on a yearly basis (Lencki; paragraph [0080]).

Lencki fails to explicitly disclose
reimbursing the employee for eligible health care expenses not reimbursed under said alternate health care plan.

However, the above features are well-known in the art, as evidenced by Trilogy.

In particular, Trilogy teaches

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reimbursing the employee for eligible health care expenses not reimbursed under said alternate health care plan (Trilogy; page 1, last line, page 4, paragraphs 2-3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Lencki to include reimbursing the employee for eligible health care expenses not reimbursed under said alternate health care plan, as taught by Trilogy, with the motivation of allowing the corporation to pay within reason, for all eligible medical costs (which are substantially all medical costs permitted by the Act excluding provincial health care premium) of the employee while taking advantage of the fact that employer contributions to an employee under a PHSP are fully tax deductible (Trilogy; page 1, paragraphs 7 and 12).

(B) Claim 36 differs from claim 22 in that it is an employee health care administration system rather than a method of reducing an employer's health care costs costs.

System claim 36 recites the subject matter of claim 22 as a set of "means-plus-function" elements rather than a series of steps and by further utilization of a database. As the underlying processes of claim 22 have been shown to be obvious in view of the collective teachings of Lencki and Trilogy in the above rejection of claim 22, including Lencki's utilization of a database (Lencki; Abstract), it is readily apparent that the system disclosed by the applied prior art performs the recited underlying functions. As such, these limitations recited in claim 36 are rejected for the same reasons given above for method claim 22, and incorporated herein.

(C) As per claim 37, Lencki and Trilogy teach a system as analyzed and discussed in claim 36 above wherein the health care administration system includes means for generating

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reimbursement checks and EOBs (Trilogy; page 1, last line, page 4, paragraphs 2-3); Examiner interprets Trilogy's teachings of "employer reimbursing employees for eligible medical expenses" and "picking up the 'patient pays' portion of prescription drugs" as teaching these limitations, since means for generating retirement checks and statements explaining reimbursement benefits are inherently part of the reimbursement process.

12. Claims 23-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lencki et al., U.S. Patent Application Publication Number 2002/0049617 in view of Trilogy Financial Group website, Frequently Asked PHSP Questions. March 2000. URL:

<<http://www.freshfrog.com/etrilogy/private3.html>>, hereinafter known as Trilogy as applied to claim 22 above, and further in view of Blau, D. et al., A Dynamic Structural Model of Health Insurance and Retirement. January 2000. URL:

<<http://www.people.virginia.edu/~sns5r/microwkshp/gilleskie.pdf>>, hereinafter known as Blau.

(A) As per claim 23, Lencki and Trilogy teach a method as analyzed and discussed in claim 22 above.

Lencki fails to explicitly disclose

wherein said alternate health care plan is at least one of another employer's health care plan, government plan, student plan and private insurance plan.

However, the above features are well-known in the art, as evidenced by Blau.

In particular, Blau teaches

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wherein said alternate health care plan is at least one of another employer's health care plan, government plan, student plan and private insurance plan (Blau; Table 5, paragraph bridging pages 22-23).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Lencki and Trilogy to include wherein said alternate health care plan is at least one of another employer's health care plan, government plan, student plan and private insurance plan, as taught by Blau, with the motivation of allowing individuals to make choices about health insurance coverage from among the available alternatives, taking into account the distribution of health insurance choices (Blau; paragraph bridging pages 3-4, page 22, paragraph 1).

(B) As per claims 24-31, Lencki, Trilogy, and Blau teach a method as analyzed and discussed above

wherein the employee elects said reimbursement plan or account and said alternate health care plan is sponsored by an employer of the employee's spouse (Blau; page 23, paragraph 2, lines 3-4);

wherein the employee elects said reimbursement plan or account and said alternate health care plan is sponsored by at least one of the employee's former employer or a former employer of the employee's spouse (Blau; page 15, lines 4-6);

wherein said reimbursement plan or account is used to reimburse eligible health care expenses consisting of deductibles, co-payments and coinsurance amounts required by said alternate health care plan (Trilogy; page 1, last line, page 4, paragraphs 2-3);

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wherein reimbursement claims under said reimbursement plan or account are wholly funded by the employer (Lencki; paragraph [0309]);

wherein reimbursement claims under said reimbursement plan or accounts are funded by the employer and the employee's pre-tax contributions (Lencki; paragraph [0193]);

wherein reimbursement claims under said reimbursement plan or account are paid by at least one of the employer, a trust and an insurance policy (Lencki; paragraph [0242]);

comprising the further step of imposing an annual limit on the amount of eligible health care expenses reimbursable under said reimbursement plan or account (Lencki; paragraphs [0146], [0206]); and

comprising the further step of varying the imposed annual limit on the amount of eligible health care expenses reimbursable under said reimbursement plan or account separately as to one or more of the employee and said other eligible individual under said reimbursement plan or account (Lencki; paragraphs [0146], [0206]).

The motivations for combining the respective teachings of Lencki, Trilogy and Blau are as given in the rejection of claims 3 and 22 above, and incorporated herein.

(C) As per claims 32-35, Lencki, Trilogy, and Blau teach a method as analyzed and discussed above

comprising the further step of varying the imposed annual limit on the amount of eligible health care expenses reimbursable under said reimbursement plan or account depending upon the extent to which the employee foregoes coverage available under said employer's other health care coverage (Lencki; paragraphs [0146], [0206]);

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comprising the further step of varying the imposed annual limit on the amount of eligible health care expenses reimbursable under said reimbursement plan or account depending upon other criteria established by the employer (Blau; page 33, paragraph 2);

wherein said other criteria include at least one of the employee's family status and the employee's health habits (Blau; page 35, paragraph 3); and

wherein the election of and reimbursement of claims under said reimbursement plan or account are administered by at least one of the employer, an insurance company and an outside third party administrator (Trilogy; page 4, paragraph 2).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied references, Sherman et al, U.S. Patent Application Publication 2001/0034619, Ryan et al., U.S. Patent Number 5, 655, 085, Parsons, U.S. Patent Number 6, 411, 939, Kenna et al., U.S. Patent Number 6, 108, 641, Joao, U.S. Patent Application Publication 2002/0032586, Spears, U.S. Patent Application Publication 2002/0128879, and Flagg, U.S. Patent Number 6, 456, 979 teach the environment of providing health care benefits.

14. Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks
Washington D.C. 20231**

or faxed to: **(703) 305-7687.**

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For informal or draft communications, please label "PROPOSED" or "DRAFT" on the front page of the communication and do NOT sign the communication. After Final communications should be labeled "Box AF."

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie A. Pass whose telephone number is (571) 272-6774. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.


16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (571) 272-3600.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Natalie A. Pass

June 27, 2005



JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600